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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,798	11/13/2001	Stefan Tobolka	SIM0080	3063

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SUITE 800  
FORT WAYNE, IN 46802

EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/010,798

Applicant(s)

TOBOLKA, STEFAN

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8-14,16,18-20 and 22-25 is/are rejected.
- 7) ☒ Claim(s) 4,6,7,15,17,21 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

Art Unit: 3721

Claims 27-33 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

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### ***REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS***

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 25 and 26** are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are duplicates of claims 20 and 21 on which they depend and therefore should be cancelled or their dependencies changed..

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### ***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**Claims 1,2,5,8-13,16,18,19 and 22-24** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Tobolka (EP0995683 - cited by applicant). The

Art Unit: 3721

patent to Tobolka shows a form-fill-seal machine which comprises opposing sealing jaws having a pair of curved bands 226 between which is positioned a cutter band 212. The functional statement that the sealing band is "configured to define temperature gradients therealong" is given little weight. Note that such a function occurs in most sealing bands by merely turning the power on and off. Note that no positive structure is claimed to support this function.

**Claims 1,2,5,8-13,16,18,19 and 22-24** are further rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Tobolka (EP0995683 - cited by applicant) in view of Wright (4,075,818). The patent to Tobolka lacks a temperature gradient defining structure. The patent to Wright shows a sealing mechanism for a form-fill-seal machine that comprises of a sealing band 20 that is designed so that temperature gradients are created and controlled (see column column 5, lines 8-32 and column 6, lines 16-48. It would have been obvious to one of ordinary skilled in the art to substitute the sealing bands of Wright for the sealing bands of Tobolka to more positively control the temperatures of the bands and seals.

**Claims 1-3,5,8-14,16,18-20 and 22-25** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Tobolka (EP0995683 - cited by applicant) in view of Rucker (4,079,570). The patent to Rucker shows a sealing mechanism for a form-fill-seal machine that comprises of a sealing band 12 that is designed with spaced "fins" 13 that inherently create temperature gradients and form strong seals. It would have been obvious to one of ordinary skilled in the art to substitute the sealing bands of Rucker for the sealing bands of Tobolka to form stronger seals.

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***ALLOWABLE SUBJECT MATTER***

**Claims 4,6,7,15,17,21 and 26** are objected to as being dependent upon a rejected base claim, but **would be allowable if rewritten in independent form** to include all of the limitations of the base claim and any intervening claims.

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***ADDITIONAL REFERENCES CITED***

The cited prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.


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Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

  
**John Sipos**  
**Primary Examiner**